

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2006 MAY 17 P 4:13

UNITED STATES OF AMERICA

v.

DON EUGENE SIEGELMAN, et al.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CASE NUMBER: 2:05CR-119-MEF

MOTION TO QUASH SUBPOENA

Comes now the person designated in the attached Subpoena issued out of the United States District Court of the Middle District of Alabama, Mark D. Wilkerson, and moves that this Court quash the Subpoena, and, as grounds therefor, states the following:

1. Movant has been subpoenaed on behalf of Defendant Richard Scrushy to appear as witness in the ongoing criminal proceedings attached hereto is Exhibit "A". Movant was previously subpoenaed by the United States Attorney. On April 19, 2006, Movant filed a Motion to Quash said subpoena, for the same reasons set forth herein.

2. Movant was and is engaged to provide legal advice to SHPDA, the CON Review Board and the Statewide Health Coordinating Council ("SHCC"). A copy of the state statute establishing SHPDA, its CON Review Board and the SHCC is attached as Exhibit "B". In those instances where Movant is representing such entities in litigation, he is acting under appointment of the Attorney General of Alabama. He is not acting under such appointment when providing legal counsel to the agency in non-litigation matters.

3. SHPDA is an agency of the State of Alabama authorized pursuant to Alabama's CON law, ALA. CODE §§ 22-21-260, *et seq.* (1975 as amended). SHPDA's Executive Director is

in charge of the daily operations of SHPDA and its professional staff. SHPDA's CON Review Board is a nine-member panel appointed by the Governor. The CON Review Board is the primary rule-making/adjudicatory body in charge of administering and enforcing the CON program.

4. Movant is unaware of the purposes for which he may be called by Defendant Scrushy and it is obviously impossible to predict all of the questions that may be asked in the course of direct or cross-examination in this type of trial. However, Movant has an obligation under Alabama Rules of Professional Responsibility, Rule 1.6, FED. R. EVID. 501 and common law not to disclose confidential information (as defined in ARPF Rule 1.6) or privileged communications without client consent or a Court Order. In light of such obligation, it is prudent for Movant to seek to Quash said subpoena or otherwise seek instructions from the Court prior to his actual appearance.

5. Movant has received consent from the Executive Director of SHPDA for the limited purposes of testifying if called as a witness in this case. However, given the structure of SHPDA, its CON Review Board and a related entity, the Statewide Health Coordinating Council, it is unclear to Movant whether a waiver from SHPDA's Executive Director alone is sufficient to consent to the disclosure of any confidential information or privileged communications with former members of the CON Board or whether the consent of the current CON Board members (or potentially others) is required.

6. Movant also requests that, should this motion be denied, that the Court clarify the extent to which Movant will be required to respond to questions relating to his representation of the agency.

7. This Motion is filed solely to satisfy Movant's obligations under the Alabama Rules of Professional Responsibility, FED. R. EVID. 501, Rule 1.6 and common law and is not intended to suggest or imply that Movant's testimony, if compelled, would benefit any party to these proceedings.

WHEREFORE, PREMISES CONSIDERED, Movant respectfully requests that this Honorable Court quash Defendant Richard Scrushy's subpoena seeking Movant's appearance or, should the motion be denied, clarify the extent to which Movant shall be required to respond to questions relating to his representation of SHPDA and its CON Board.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 17th day of May, 2006, filed this in the United States District Court for the Middle District of Alabama Southern Division and served a copy of the foregoing document on all counsel of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:



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